

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No 5 of 1999

with

CENTRAL EXCISE AND CUSTOMS GOLD CONTROL APP. NOS 9 AND  
10 OF 1999.

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF CEC

Versus

CHOKSHI SILK MILLS AND OTHERS,

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Appearance:

cecga 5 of 1999;

MR KAMAL M MEHTA for Petitioner

NOTICE SERVED for Respondent No. 1

CECGA 9 OF 1999

MR KAMAL MEHTA FOR THE PETITIONER

TRIVEDI AND GUPTA FOR RESPONDENT

CECGA 10 OF 1999

MR KAMAL MEHTA FOR THE PETITIONER

MR D C DAVE FOR RESPONDENT.

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE  
Date of decision: 24/08/1999

ORAL JUDGEMENT

Per Thakker, J.

All these applications have been made by the Commissioner of Central Excise and Customs, Surat I under Section 35G (3) of the Central Excise Act, 1944 directing the Tribunal to refer the following two questions of law for the opinion of this Court:

- "(i) Whether in absence of any specific penal provisions in Section 3 (3) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the penal provisions relating to confiscation and imposition of penalty are applicable to man made fabrics which are "excisable goods" finding mention in schedule to the Central Excise Tariff Act, 1985 though they are liable to additional duty of excise only ?\
- (ii) What is the impact of amendment in sub-section 3 (3) where the Parliament has amended the said section by introducing words "offence and penalties" (which was introduced in 1994) on the present proceeding."

The case of the applicant in CECGA No.5 of 1999 was that on 23.8.1991, as per directions and instructions of the Additional Collector, Central Excise and Customs, Surat, officers of the department paid a surprise visit to the premises of the respondent-assessee, verified the stock and found that certain goods were lying which were not accounted for. No satisfactory explanation could be given by one of the partners of the firm. Proceedings were, therefore, initiated. A show cause notice was issued and an order was passed against the respondent imposing fine and penalty. An appeal filed against the said order was dismissed, but on further appeal, the order was set aside by the Tribunal relying on a decision of the Delhi High Court in Pioneer Silk Mills Limited vs. Union of India, 1995 (80) ELT 507. An application made under Section 35G (1) was rejected by the Tribunal vide order dated 11.11.1998. Hence, the applicant has filed these applications under Section 35G (3).

At the time of hearing of these applications, our attention was invited to the following facts :

- (i) Against the decision of the Delhi High Court in Pioneer Silk Mills Ltd. vs. Union of India, the applicant has approached the Honourable Supreme Court by filing SLP which was granted and the matter is sub-judice;
- (ii) The Delhi High Court had decided the matter prior to the amendment of Section 3 and, hence, the ratio laid down in the said decision would not apply to the facts of the case;
- (iii) As held by this Court in Maheshwari Mills Vs. Union of India, 1998 (45) ELT, 252, additional duty of excise could be levied and collected under Section 3 (1) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, and
- (iv) Recently, an application was filed by the department being CECGA 21 OF 1998 and this Court has granted the same vide order dated 5.4.1999.

In the light of the above facts and circumstances, in our opinion, the questions which apparently are questions of law arise for the opinion of this Court. Accordingly, these applications are allowed and we direct the Tribunal to refer the aforesaid questions of law to this Court and submit a statement of case in accordance with law. Rule is made absolute . There shall be no order as to costs.

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